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United States Senate

COMMITTEE ON FOREIGN RELATIONS

WASHINGTON, DC 20510-6225

August 8, 2018

Honorable Robert W. Ferguson
Attorney General of Washington
800 Fifth Avenue, Suite 2000
Seattle, WA 98104

Dear Attorney General Ferguson:

I write regarding the U.S. Department of State's temporary modification of the International Traffic in Arms Regulation (ITAR), and to express my grave concern about the Department's decision to permit Defense Distributed and its associates to publish on the Internet computer code for the printing of 3D firearms, particularly without providing the statutorily-required notice to Congress.

Section 38(f) of the Arms Export Control Act, 22 U.S.C. § 2778(f), prohibits the Department from removing any item from the U.S. Munitions List (USML) without providing 30 days' notice to the House Committee on Foreign Affairs and the Senate Committee on Foreign Relations (the Committee). However, the Department failed to provide the Committee the required notice before issuing the temporary modification to ITAR and before sending the letter approving for public release the computer blueprints for printing 3D guns.

On July 25, 2018, I wrote to the Secretary of State expressing my disapproval of the Department's actions and its failure to notify Congress as required by § 2778(f). I called on the Secretary to immediately review and reconsider the Department's position, and in particular, expressed my concern that the Department's "temporary" suspension allowing Internet publication of export-controlled technical information, and therefore distribution worldwide, was tantamount to a permanent removal of an item from the USML. I also expressed my concern that allowing computer code for 3D printing of firearms to be distributed around the world would make the work of U.S. and international law enforcement and counter-terrorism agencies more difficult, and would heighten the risk to innocent Americans, particularly in light of school, church, public park and other mass shootings.

The Arms Export Control Act provides a legal oversight role for Congress regarding proposed removals from the USML. The required notices enable Congress to exercise its constitutional oversight authority and ensure national security.

Historically, the Department typically accords the Committee more deference in the review process than even 22 U.S.C. § 2778(f) provides. Often, the Department gives additional time beyond the 30 days' notice to the Committee when it proposes to remove items from the USML, frequently up to 60 days. During this period, the Department is in close contact with Congress to explain the rationale for the removal and address any questions. It meets regularly with

appropriate staff, explains what it is seeking to remove from the list and why, and details the reasons the removal will not endanger national security or U.S. interests. The Department would also inform the Committee if the Department of Defense concurred with a proposed removal. In contrast, there was no such consultation or explanation regarding the Department's actions at issue in this case. This is especially alarming given the intense level of interest and scrutiny that my colleagues and I have demonstrated regarding the pending regulatory proposal to move the regulation of small arms and other light weapons from the Department of State's jurisdiction to the Department of Commerce. *See* Proposed Rule, ITAR: USML Categories I, II, and III, 83 Fed. Reg. 24,198; 83 Fed. Reg. 24,166 (May 24, 2018). I and other colleagues have filed public comments lodging our concerns with that proposal, and in particular the fact that it would result in reduced oversight over the export of these firearms. *See* Comment on Proposed Rule, ITAR: USML Categories I, II, and III (July 9, 2018). Had we received notice of the Department's proposal to exempt the computer code for 3D printing of firearms from the ITAR, I certainly would have voiced my vociferous public opposition much earlier, and would have worked to prevent it from occurring.

The Department's failure to comply with 22 U.S.C. § 2778(f) deprived us of the opportunity to conduct effective oversight before approving public release of these blueprints. Given the grave national security considerations at issue, I find the Department's decision and process to allow the release of these blueprints very concerning. The Department's actions not only circumvented the statutory notice requirement but diverged from established practice when items are proposed for removal from the USML.

I remain alarmed at the prospect that these 3D gun blueprints could still make their way into the hands of terrorist groups around the world who are seeking easier access to guns, and I continue to appeal to the Department to reverse this misguided and dangerous decision.

Sincerely,

A handwritten signature in blue ink that reads "Robert Menendez". The signature is fluid and cursive, with a large, stylized "R" and "M".

Robert Menendez
Ranking Member

CC:

Gurbir S. Grewal
Attorney General of New Jersey

George Jepsen
Attorney General of Connecticut

Brian E. Frosh
Attorney General of Maryland

Barbara D. Underwood
Attorney General of New York

Maura Healey
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